ment for plaintiff, and defendant brings error. Reversed, and remanded for new trial.

N. T. Green and *J. M. Keeling,* for plaintiff in error.

Page, Page & Page and *Daniel Coleman,* for defendant in error.

Memorandum decision: CARDWELL J. We are of opinion that the question presented upon the writ of error is controlled by the cases of City Gas Co. of Norfolk *v.* Poudre, 74 S. E. 158, ante, p. 112, and Whitley *v.* Booker Brick Co., 74 S. E. 160, ante, p. 134, just decided by this court. Therefore, for the reasons given in the opinions filed in those cases and the authorities cited, the judgment complained of in this case has to be reversed, and the cause remanded for a new trial.

Reversed.

POTOMAC, F. & P. R. CO. *v.* CHICHESTER.

March 14, 1912.

[74 S. E. 162.]

1. Evidence (§ 211*)—Injury to Servant—Defective Appliances—Admissibility.—The testimony of the general manager of a railroad company in an action for injuries to an employee, caused by a defective brake on a car, that the lever and pin in use more than a year after the accident were the same as in use at the time of the accident, is unambiguous, and merely identifies the parts of the brake; and it is error to admit the testimony on a subsequent trial as an admission that the brake was in the same condition more than a year after the accident that it was in at the time of the accident, especially where on the subsequent trial the general manager testified that he merely intended to identify the parts of the brake, and that he had no knowledge of its condition at the time of the accident.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 738-744; Dec. Dig. § 211.* 9 Va.-W. Va. Enc. Dig. 724.]

2. Master and Servant (§ 270*)—Injury to Servant—Defective Appliances—Evidence—Admissibility.—Where, in an action for injuries to a railroad employee, the issue was whether the brake on a car was defective, evidence of the condition of the brake about 13 months after the accident was inadmissible, in the absence of evidence that its condition was unchanged.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 913-927, 932; Dec. Dig. § 270.* 9 Va.-W. Va. Enc. Dig. 724.]

3. Master and Servant (§ 270*)—Injury to Servant—Defective Appliances—Evidence Admissibility.—Evidence of the condition of

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

machinery a reasonable time after an accident to an employee is admissible, in the absence of evidence of a change of condition in the meantime; but, when considerable time has elapsed, the burden of proof shifts, and the evidence is inadmissible, unless the condition has not changed.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 913-927, 932; Dec. Dig. § 270.* 9 Va.-W. Va. Enc. Dig. 724.]

4. Appeal and Error (§ 1053*)—Erroneous Admission of Evidence—Correction by Instructions.—Where, in an action for injuries to a railroad employee, the issue was whether the brake on a car was defective, and the court erroneously admitted the testimony of the general manager of the company, given on a former trial, as an admission that the brake on the car was in the same condition more than a year after the accident as at the time of the accident, the error was not cured by a charge that, if the general manager did not intend to say that the brake was in the same condition at the last trial as at the date of the accident, his testimony on that subject must be disregarded; he testifying at the last trial that on the former trial he merely intended to identify the parts of the brake.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4178-4184; Dec. Dig. § 1053;* Trial, Cent. Dig. § 977. 9 Va.-W. Va. Enc. Dig. 724.]

Error to Circuit Court, Orange County.

Action by one Chichester, administrator of Charles S. Waller, deceased, against the Potomac, Fredericksburg & Piedmont Railroad Company. There was a judgment for plaintiff, and defendant brings error. Reversed.

See, also, 111 Va. 152, 68 S. E. 404, 16 Va. Law Reg. 462.

St. Geo. R. Fitzhugh and *John G. Williams,* for plaintiff in error.

E. H. De Jarnette, Jr., for defendant in error.

DEANE *v.* TURNER et al.

March 14, 1912.

[74 S. E. 165.]

1. Boundaries (§ 26*)—Equity—Jurisdiction—Disputed Boundary.—A bill alleged that complainants had the legal title to and were in possession of land, and that a cloud had been created upon their title by defendant's recording of an old survey, and prayed for relief quieting complainant's possession, and further alleged that defendant had trespassed upon the woodland of complainants, claiming title thereto, and was disturbing them in the quiet enjoyment of their

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.